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October 15, 2004

**VIA MESSENGER**

Cathlene Hanaman, Legislative Attorney  
Legislative Reference Bureau  
One East Main, Suite 200  
Madison, WI 53703

RE: Probate Trailer Bill LRB-0135/P1

Dear Cathlene:

I enclose the comments from the Real Property, Probate and Trust Section of the State Bar to the September 16, 2004 draft of the Probate Trailer Bill, including the comments from Professor Howard Erlanger.

Your Drafter's Note dated September 16, 2004 was very helpful, and we hope to respond to the issues you raised next week.

As you know, our goal is to introduce this bill in January, 2005. Please let us know if you foresee any problems with meeting this date.

Thank you for your assistance in this matter.

Sincerely,

Boardman, Suhr, Curry & Field LLP

By

A handwritten signature in cursive script, appearing to read "Elizabeth A. Heiner".

Elizabeth A. Heiner

EAH/jan  
Enclosure

cc: Professor Howard Erlanger (w/enc)  
Attorney Dave Reinecke (w/enc)

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## PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

*September 16, 2004**Returned to LRB OCT 15, 2004*

1     **AN ACT** *to repeal* 854.03 (3), 854.03 (4), 854.03 (7), 854.06 (1) (b), 854.14 (1),  
2         854.21 (1) (a) 1., 2. and 3., 861.04 (2), 861.21 (3), 861.31 (1c), 861.33 (1) (c) and  
3         861.35 (1c); *to renumber* 701.115 (1), 766.62 (4), 853.32 (1) and 854.13 (2) (a);  
4         *to renumber and amend* 701.24, 701.26, 705.04 (2), 766.31 (3), 766.31 (6),  
5         852.01 (1) (a) 2., 853.03 (2), 853.11 (2), 853.32 (2) (b), 854.01, 854.05 (5), 854.06  
6         (4) (a), 854.08 (5), 854.13 (10), 854.15 (1) (e), 854.20 (1), 854.20 (2) (intro.),  
7         854.20 (2) (a), 854.20 (2) (b), 854.20 (3), 854.20 (4), 854.21 (1) (a) (intro.), 857.03  
8         (2) and 861.01 (3); *to amend* 30.541 (3) (d) 2. d., 40.02 (8) (a) 2., 71.05 (6) (a) 16.,  
9         71.05 (6) (b) 12., 71.05 (12) (d), 101.9211 (4) (b) 4., 342.17 (4) (b) 4., 700.11 (1),  
10         701.115 (2), 701.115 (3), 701.20 (5) (d), 701.24 (title), 701.26 (title), 702.03 (1),  
11         702.08, 705.06 (1) (c), 705.06 (2), 705.21 (12) (a), 705.27, 766.61 (7), 766.62 (2),  
12         766.62 (5) (intro.), 767.266 (1) (b), 851.21 (1) (b), 851.31, 851.50, 852.01 (1) (b),  
13         852.12, 853.11 (3), 853.11 (6) (c), 853.11 (6) (d), 853.18 (1), 853.32 (2) (a), 854.03  
14         (2) (b), 854.03 (5) (d), 854.03 (6), 854.04 (1) (a), 854.04 (5) (intro.), 854.06 (4) (b),  
15         854.07 (3), 854.08 (6) (a) 1., 854.08 (6) (a) 2., 854.13 (title), 854.13 (7) (a), 854.13

(8), 854.13 (9), 854.13 (12) (b), 854.14 (5) (a), 854.14 (5) (b), 854.14 (5) (c), 854.17, 854.18 (1) (a) (intro.), 854.18 (3), 854.20 (5), 854.21 (1) (b), 856.05 (5), 856.15 (1), 856.17, subchapter II (title) of chapter 861 [precedes 861.018], 861.02 (title), 861.02 (4), 861.02 (6), 861.02 (7) (b), 861.05 (1) (c), 861.05 (2) (title), 861.06 (title), 861.06 (2) (title), 861.06 (2) (b) (intro.), 861.06 (2) (b) 4. a., 861.07 (2) (intro.), 861.10 (1), 861.10 (2), 861.11 (2) (a) (intro.), 861.11 (2) (b), 861.11 (5) (b), 861.17 (3), 861.21 (1) (a), 861.21 (2), 861.21 (4), 861.21 (5), 861.31 (1m), 861.31 (2), 861.31 (4) (intro.), 861.31 (4) (a), 861.33 (title), 861.33 (1) (a) (intro.), 861.33 (1) (b), 861.33 (2), 861.33 (3), 861.33 (4), 861.35 (title), 861.35 (1m) (intro.), 861.35 (1m) (a), 861.35 (1m) (b), 861.35 (1m) (c), 861.35 (2), 861.35 (3) (a), 861.35 (4) (intro.), 861.35 (4) (a), 863.08, 863.15, 865.07 (1) (d), 867.03 (1g) (intro.), 867.03 (1g) (b) and 867.035 (1) (a) 4.; *to repeal and recreate* 701.19 (10), 853.04 (3), 854.08 (5) (title), 856.16, 861.02 (8), 863.16 and 863.19; *to create* 40.18, 700.27, 701.115 (1) (a), 701.24 (2), 701.26 (1) (d), 701.26 (2), 705.04 (2) (a), 705.04 (2) (d), 705.04 (2) (e), 705.04 (2) (f), 705.21 (12) (am), 766.31 (1) (title), 766.31 (2) (title), 766.31 (3) (b), 766.31 (4) (title), 766.31 (5) (title), 766.31 (6) (title), 766.31 (6) (b), 766.31 (7) (title), 766.31 (7p) (title), 766.31 (8) (title), 766.31 (9) (title), 766.31 (10) (title), 766.62 (4) (b), 766.62 (4) (c), 851.055 (1m), 852.01 (1) (a) 2. b., 853.03 (2) (bm), 853.11 (2m), 853.32 (1) (bm), 853.32 (2) (am), 854.01 (1), 854.03 (5) (g), 854.03 (5) (h), 854.03 (5) (i), 854.03 (5) (j), 854.035, 854.06 (4) (am), 854.08 (5) (a), 854.08 (5) (d), 854.115, 854.12, 854.13 (2) (a) 1., 854.13 (2) (gm), 854.13 (2) (i), 854.13 (10) (b), 854.14 (3m), 854.20 (2) (am) 2. b. and c., 854.20 (2) (bm), 857.03 (2m), 861.01 (3m), 861.01 (4), 861.01 (5), 861.04 (2m), 861.05 (1) (e), 861.05 (2m), 861.06 (6), 880.61 (11m) and 880.675 (1m) of

1 the statutes; and **to affect** 1997 Wisconsin Act 188, section 233 (1); **relating**  
2 **to:** miscellaneous modifications to the Wisconsin Probate Code.

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***Analysis by the Legislative Reference Bureau***

This bill primarily corrects technical errors and clarifies various provisions in 1997 Wisconsin Act 188, which modernized the Wisconsin Probate Code. This bill also continues the process of extending various interpretative rules from probate to nonprobate assets and of allowing extrinsic evidence to be used when interpreting the intent of the transferor. This bill also creates additional protections for a decedent spouse who is murdered by the surviving spouse.

*, especially with respect to rules of construction.*

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

3 **SECTION 1.** 30.541 (3) (d) 2. d. of the statutes is amended to read:

4 30.541 (3) (d) 2. d. The limit in subd. 2. c. does not apply if the surviving spouse  
5 proceeds under s. 867.03 (1g) and the total value of the decedent's solely-owned  
6 property subject to administration in the state, including boats transferred under  
7 this subdivision, does not exceed \$20,000 \$50,000.

8 **SECTION 2.** 40.02 (8) (a) 2. of the statutes is amended to read:

9 40.02 (8) (a) 2. In the absence of a written designation of beneficiary, or if all  
10 beneficiaries so designated die before filing with the department an application for  
11 any death benefit payable, the person determined in the following sequence: group  
12 1, widow or widower; group 2, children if at least one child survives the participant,  
13 employee or annuitant, in which event the share of any deceased child shall be  
14 payable to the surviving spouse of the child or to the surviving children of the child  
15 if there is no spouse, or otherwise to the other eligible children in this group; group  
16 3, grandchild; group 4, parent; group 5, brother and sister issue, as defined in s.

1 851.13, per stirpes, as described in s. 854.04 (1). No payment may be made to a person  
2 included in any group 2 if there is a living person in any preceding group 1.

3 **SECTION 3.** 40.18 of the statutes is created to read:

4 **40.18 Applicability of other statutes. (1)** MARITAL PROPERTY RIGHTS.  
5 Chapter 766 applies to ownership rights and remedies of a spouse in benefits  
6 provided under this chapter.

7 **(2)** TRANSFERS AT DEATH. Chapter 854 applies to transfers at death under this  
8 chapter.

9 **(3)** DEFERRED MARITAL PROPERTY ELECTION. Sections 861.018 to 861.10 apply to  
10 the election rights of a surviving spouse in benefits provided under this chapter.

11 **SECTION 4.** 71.05 (6) (a) 16. of the statutes is amended to read:

12 71.05 **(6)** (a) 16. Any amount recognized as a loss under section 1001 (c) of the  
13 ~~internal revenue code~~ Internal Revenue Code if a surviving spouse and a distributee  
14 exchange their interests in marital property under s. ~~857.03 (2)~~ 766.31 (3) (b).

15 **SECTION 5.** 71.05 (6) (b) 12. of the statutes is amended to read:

16 71.05 **(6)** (b) 12. Any amount recognized as a gain under section 1001 (c) of the  
17 ~~internal revenue code~~ Internal Revenue Code if a surviving spouse and a distributee  
18 exchange their interests in marital property under s. ~~857.03 (2)~~ 766.31 (3) (b).

19 **SECTION 6.** 71.05 (12) (d) of the statutes is amended to read:

20 71.05 **(12)** (d) Property exchanged under s. ~~857.03 (2)~~ 766.31 (3) (b) shall be  
21 treated as if acquired by gift for the determination of basis.

22 **SECTION 7.** 101.9211 (4) (b) 4. of the statutes is amended to read:

23 101.9211 **(4)** (b) 4. The limit in subd. 3. does not apply if the surviving spouse  
24 is proceeding under s. 867.03 (1g) and the total value of the decedent's ~~solely owned~~

1 property subject to administration in the state, including the manufactured homes  
2 transferred under this paragraph, does not exceed \$10,000 \$50,000.

3 **SECTION 8.** 342.17 (4) (b) 4. of the statutes is amended to read:

4 342.17 **(4)** (b) 4. The limit in subd. 3. does not apply if the surviving spouse is  
5 proceeding under s. 867.03 (1g) and the total value of the decedent's ~~solely owned~~  
6 property subject to administration in the state, including the vehicles transferred  
7 under this paragraph, does not exceed \$20,000 \$50,000.

8 **SECTION 9.** 700.11 (1) of the statutes is amended to read:

9 700.11 **(1)** If a statute, inter vivos governing instrument, as defined in s. 700.27  
10 (1) (c), or governing instrument, as defined in s. 854.01 (2), specifies that property  
11 is to be distributed to, or a future interest is to be created in, a designated individual's  
12 "heirs", "heirs at law", "next of kin", "relatives" ~~or,~~ "family," or a term that has  
13 a similar meaning, or if a class gift in favor of "descendants", "issue," or "heirs of the  
14 body" does not specify the manner in which the property is to be distributed among  
15 the class members, the property is distributed according to s. 854.22.

16 **SECTION 10.** 700.27 of the statutes is created to read:

17 **700.27 Disclaimer of transfers during life. (1) DEFINITIONS.** In this section:

18 (a) "Beneficiary under an inter vivos governing instrument" includes any  
19 person who receives or might receive property under the terms or legal effect of an  
20 inter vivos governing instrument.

21 (b) "Extrinsic evidence" has the meaning given in s. 854.01 (1).

22 (c) "Inter vivos governing instrument":

23 1. Means a gratuitous deed, inter vivos trust instrument, insurance policy,  
24 contract, inter vivos instrument that creates or exercises a power of appointment, or

1 any other dispositive, appointive, or nominative instrument that transfers property  
2 other than a governing instrument as defined in s. 854.01 (2).

3 2. Includes an inter vivos gift that is not subject to a written instrument.

\*\*\*\*NOTE: The "or" that preceded "inter vivos instrument" was not put there  
intentionally. Thank you for noticing the error. ✓ *Thanks.*

4 (d) "Power" has the meaning given in s. 702.01 (4).

5 (2) RIGHT TO DISCLAIM. (a) *In general.* 1. In this paragraph, "person" includes  
6 a person who is unborn or unascertained.

7 2. A person who is a recipient of property or beneficiary under an inter vivos  
8 governing instrument, donee of a power created by an inter vivos governing  
9 instrument, appointee under a power exercised by an inter vivos governing  
10 instrument, taker in default under a power created by an inter vivos governing  
11 instrument, or person succeeding to disclaimed property created by an inter vivos  
12 governing instrument may disclaim any property, including contingent or future  
13 interests or the right to receive discretionary distributions, by delivering a written  
14 instrument of disclaimer under this section.

15 (b) *Partial disclaimer.* Property transferred under an inter vivos governing  
16 instrument may be disclaimed in whole or in part, except that a partial disclaimer  
17 of property passing by an inter vivos governing instrument or by the exercise of a  
18 power may not be made if partial disclaimer is expressly prohibited by the inter vivos  
19 governing instrument or by the instrument exercising the power.

20 (c) *Spendthrift provision.* The right to disclaim exists notwithstanding any  
21 limitation on the interest of the disclaimant in the nature of a spendthrift provision  
22 or similar restriction.

1           (d) *Disclaimer by a guardian or conservator.* A guardian of the estate or a  
2 conservator appointed under ch. 880 may disclaim on behalf of his or her ward, with  
3 court approval, if the ward is entitled to disclaim under this section.

4           (e) *Disclaimer by an agent under power of attorney.* An agent under a power  
5 of attorney may disclaim on behalf of the person who granted the power of attorney  
6 if all of the following apply:

7           1. The person who granted the power of attorney is entitled to disclaim under  
8 this section.

9           2. The power of attorney specifically grants the power to disclaim.

10          (f) *Disclaimer by trustee.* The trustee of a trust named as a recipient of property  
11 under an inter vivos governing instrument may disclaim that property on behalf of  
12 the trust if the governing instrument authorizes disclaimer by the trustee. If the  
13 governing instrument does not authorize disclaimer by the trustee, the trustee's  
14 power to disclaim is subject to the approval of the court.

15          (g) *After death.* A person's right to disclaim survives the person's death and  
16 may be exercised by the person's personal representative or special administrator  
17 upon receiving approval from the court having jurisdiction of the person's estate after  
18 hearing upon notice to all persons interested in the disclaimed property, if the  
19 personal representative or special administrator has not taken any action that would  
20 bar the right to disclaim.

21          (h) *Disclaimers of transfers at death.* A person who is a recipient of property  
22 under a governing instrument, as defined in s. 854.01 (2), may disclaim such  
23 property as provided in s. 854.13.

24          **(3) INSTRUMENT OF DISCLAIMER.** The instrument of disclaimer must meet the  
25 provisions of subs. (4) and (5) and s. 854.13 (3) (a) to (c).



1           (4) TIME FOR EFFECTIVE DISCLAIMER. (a) *Present interest.* An instrument  
2       disclaiming a present interest shall be executed and delivered not later than 9  
3       months after the effective date of the transfer under the inter vivos governing  
4       instrument. For cause shown, the period may be extended by a court of competent  
5       jurisdiction, either within or after the 9-month period, for such additional time as  
6       the court considers just.

7           (b) *Future interest.* An instrument disclaiming a future interest shall be  
8       executed and delivered not later than 9 months after the event that determines that  
9       the taker of the property is finally ascertained and his or her interest indefeasibly  
10      fixed. For cause shown, the period may be extended by a court of competent  
11      jurisdiction, either within or after the 9-month period, for such additional time as  
12      the court considers just.

13          (c) *Future right to income or profits.* Notwithstanding pars. (a) and (b), an  
14      instrument disclaiming the future right to receive mandatory distributions of  
15      income or profits from any source may be executed and delivered at any time.

16          (d) *Persons under 21.* Notwithstanding pars. (a) and (b), a person under 21  
17      years of age may disclaim at any time not later than 9 months after the date on which  
18      the person attains 21 years of age.

19          (e) *Interests arising by disclaimer.* Notwithstanding pars. (a) and (b), a person  
20      whose interest in property arises by disclaimer or by default of exercise of a power  
21      created by an inter vivos governing instrument may disclaim at any time not later  
22      than 9 months after the day on which the prior instrument of disclaimer is delivered,  
23      or the date on which the donee's power lapses.

24          (5) DELIVERY AND FILING OF DISCLAIMER. (a) *Delivery.* In addition to any  
25      requirements imposed by the inter vivos governing instrument, the instrument of

1 disclaimer is effective only if, within the time specified under sub. (4), it is delivered  
2 to and received by any of the following:

- 3 1. The transferor of the property disclaimed.
- 4 2. The transferor's legal representative.
- 5 3. The holder of legal title to the property.

6 (b) *Delivery to trustee.* If the trustee of any trust to which the interest or power  
7 relates does not receive the instrument of disclaimer under par. (a), a copy shall also  
8 be delivered to the trustee. Failure to deliver a copy of the instrument of disclaimer  
9 to the trustee within the time specified under sub. (4) does not affect the validity of  
10 any disclaimer.

11 (c) *Recording.* If real property or an interest in real property is disclaimed, a  
12 copy of the instrument of disclaimer may be recorded in the office of the register of  
13 deeds of the county in which the real estate is situated.

14 **(6) PROPERTY NOT VESTED.** The property disclaimed under this section shall be  
15 considered not to have been vested in, created in, or transferred to the disclaimant.

16 **(7) DEVOLUTION IN GENERAL.** (a) Unless the inter vivos governing instrument  
17 provides otherwise, either expressly or as construed from extrinsic evidence, the  
18 disclaimed property devolves as if the disclaimant had died before the effective date  
19 of the transfer under the inter vivos governing instrument. If the disclaimant is an  
20 appointee under a power exercised by an inter vivos governing instrument, the  
21 disclaimed property devolves as if the disclaimant had died before the effective date  
22 of the exercise of the power. If the disclaimant is a taker in default under a power  
23 created by an inter vivos governing instrument, the disclaimed property devolves as  
24 if the disclaimant had predeceased the donee of the power.

(b) A disclaimer relates back for all purposes to the effective date of the transfer under the inter vivos governing instrument. If the disclaimant is an appointee under a power exercised under an inter vivos governing instrument, the disclaimer relates back to the effective date of the exercise of the power. If the disclaimant is a taker in default under a power created by an inter vivos governing instrument, the disclaimer relates back to the last possible date for exercise of the power. A disclaimer of the future right to receive mandatory distributions of income or profits relates to the period stated in the disclaimer.

*please see report sheet  
re sub headings.*

(8) DEVOLUTION OF DISCLAIMED FUTURE INTEREST. (a) Unless the inter vivos governing instrument provides otherwise, either expressly or as construed from extrinsic evidence, upon the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died immediately before the time of distribution or, if the disclaimant is an appointee under a power exercised by a power of appointment, as if the disclaimant had died before the effective date of the exercise of power.

(b) A future interest held by the disclaimant takes effect as described in par. (a) unless the court determines that acceleration would contradict the donor's probable intent.

*In this case, it would need to be a court.  
Thanks for checking.*

\*\*\*NOTE: Is the court the only person that can determine that acceleration would contradict the donor's probable intent? I ask only because you were careful to use passive voice elsewhere because the court was not the only person able to make determinations.

(9) BAR. ~~(a)~~ Actions that bar disclaimer are as provided in s. 854.13 (11) (a).

(10) EFFECT OF DISCLAIMER.

~~(a)~~ The effect of the disclaimer on the successors in interest *disclaimant and any* are as provided in *is?*

s. 854.13 (11) (b). (11 m)

*(9)  
(Seems that (a) + (b) have no relationship  
to each other. This is a carryover from  
the structure in 854.11, which should be  
broken up as well.)*

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p10. l. 9, 16.

This provision is similar to the revised 854.13(10), which has subheadings. We would like to use the same subheadings here.

1           <sup>(11)</sup>  
~~(10)~~ NONEXCLUSIVENESS OF REMEDY. (a) This section does not affect the right of  
2           a person to waive, release, disclaim, or renounce property under any other statute,  
3           or the common law, or as provided in the inter vivos governing instrument.

4           (b) Any disclaimer that meets the requirements of section 2518 of the Internal  
5           Revenue Code or of any other federal law relating to disclaimers constitutes an  
6           effective disclaimer under this section or s. 854.13.

7           <sup>(12)</sup>  
~~(11)~~ CONSTRUCTION OF EFFECTIVE DATE. In this section, the effective date of a  
8           irrevocable transfer under an inter vivos governing instrument is the date on which  
9           the donor executed the instrument or made the transfer. The effective date of a  
10          revocable transfer under an inter vivos governing instrument is the date on which  
11          the person with the power to revoke the transfer no longer has that power or the  
12          power to transfer the legal or equitable ownership of the property that is the subject  
13          of the transfer.

14          SECTION 11. 701.115 (1) of the statutes is renumbered 701.115 (1) (b).

15          SECTION 12. 701.115 (1) (a) of the statutes is created to read:

16          701.115 (1) (a) In par. (b), “revocable trust” means a trust that the grantor, at  
17          the time of death, was alone empowered to change or revoke, by law or under the  
18          instrument creating the trust, regardless of whether the grantor then had the  
19          capacity to exercise the power.

20          SECTION 13. 701.115 (2) of the statutes is amended to read:

21          701.115 (2) Survivorship under sub. (1) (b) is governed by s. 854.03.

22          SECTION 14. 701.115 (3) of the statutes is amended to read:

23          701.115 (3) The rights of the issue of a predeceasing beneficiary under sub. (1)  
24          (b) are governed by s. 854.06.

25          SECTION 15. 701.19 (10) of the statutes is repealed and recreated to read:

1           701.19 **(10)** RESTRICTION ON EXERCISE OF POWERS. (a) Except as provided in par.  
2           (c), a person may not exercise any of the following powers conferred upon him or her  
3           in his or her capacity as trustee:

4           1. The power to make discretionary distributions of trust principal or income  
5           if the distributions are to himself or herself or for the discharge of his or her legal  
6           obligations.

7           2. The power to make discretionary allocations of receipts or expenses as  
8           between principal and income if the allocations are in his or her favor.

9           (b) If a power under par. (a) is conferred upon more than one person as trustee,  
10          a person who is not disqualified to act under par. (a) may exercise the power for the  
11          benefit of the person who is disqualified to act, unless the creating instrument  
12          expressly provides otherwise. A special trustee appointed by a court may exercise  
13          a power under par. (a) for the benefit of the disqualified person if no other trustee is  
14          qualified to exercise the power.

15          (c) Paragraph (a) does not apply if any of the following applies:

16          1. The person is also the settlor of the trust, and the trust may be revoked or  
17          amended by the settlor.

18          2. The terms of the creating instrument specifically limit the scope of the power  
19          to expenditures and distributions of income or principal on the basis of an  
20          ascertainable standard relating to the person's health, maintenance, support, or  
21          education such that the person would not be subject to tax under section 2041 or 2514  
22          of the Internal Revenue Code as a result of having or exercising the power.

23          3. The person is the spouse, widow, or widower of the settlor of the trust, and  
24          a marital deduction has been allowed for federal gift or estate tax purposes with  
25          respect to the trust property that is subject to the power.

1           4. The creating instrument negates the application of par. (a) with respect to  
2 the power or indicates that provisions that are similar to par. (a) do not apply.

3           (d) Section 701.24 (2) governs the applicability of this statute.

4           **SECTION 16.** 701.20 (5) (d) of the statutes is amended to read:

5           701.20 (5) (d) A legatee, including a trustee, of a specific amount of money not  
6 determined by a pecuniary formula shall not be paid any part of the income of the  
7 estate but shall receive interest on any unpaid portion of the legacy for the period  
8 commencing one year after decedent's death at the legal rate set forth in s. 138.04.  
9 For purposes of this paragraph, the deferred marital property elective share amount  
10 elected by a surviving spouse under s. 861.02 (1) is a bequest of a specific amount of  
11 money not determined by a pecuniary formula.

\*\*\*\*NOTE: I will be working on the Uniform Principal and Income Act so  
coordination regarding this section should be no problem. That draft is LRB-0165.

*Good News! Thanks*

12           **SECTION 17.** 701.24 (title) of the statutes is amended to read:

13           **701.24 (title) Applicability of ss. 701.01 to 701.23.**

14           **SECTION 18.** 701.24 of the statutes is renumbered 701.24 (1) and amended to  
15 read:

16           701.24 (1) Except as otherwise provided in sub. (2) and s. 701.19 (9) (a) and (10),  
17 ss. 701.01 to 701.23 are applicable to a trust existing on July 1, 1971, as well as a trust  
18 created after such date, and shall govern trustees acting under such trusts. If  
19 application of any provision of ss. 701.01 to 701.23 to a trust in existence on August  
20 1, 1971, is unconstitutional, it shall not affect application of the provision to a trust  
21 created after that date.

22           **SECTION 19.** 701.24 (2) of the statutes is created to read:

1        701.24 **(2)** Section 701.19 (10) is applicable to a trust existing on the effective  
2        date of this subsection .... [revisor inserts date], as well as a trust created after that  
3        date, and shall govern trustees acting under such trusts. If application of any  
4        provision of s. 701.19 (10) to a trust in existence on the effective date of this  
5        subsection .... [revisor inserts date], is unconstitutional, it shall not affect application  
6        of the provision to a trust created after that date.

7        **SECTION 20.** 701.26 (title) of the statutes is amended to read:

8        **701.26 (title) Disclaimers of nonprobate transfers at death.**

9        **SECTION 21.** 701.26 of the statutes is renumbered 701.26 (1) and amended to  
10       read:

11       701.26 **(1)** A person recipient may disclaim, under s. 854.13, any of the  
12       following:

13       (a) ~~An~~ All or part of an interest in a joint tenancy, upon the death of another  
14       joint tenant.

15       (b) ~~An~~ All or part of an interest in survivorship marital property, upon the death  
16       of the other spouse.

17       (c) ~~An~~ All or part of an interest that is created by a nontestamentary instrument  
18       and transferred at death, upon the death that causes the transfer.

19       **SECTION 22.** 701.26 (1) (d) of the statutes is created to read:

20       701.26 **(1)** (d) All or part of any other interest transferred under a governing  
21       instrument, as defined in s. 854.01 (2).

22       **SECTION 23.** 701.26 (2) of the statutes is created to read:

23       701.26 **(2)** A recipient may disclaim, under s. 700.27, all or part of any interest  
24       transferred under an inter vivos governing instrument, as defined in s. 700.27 (1) (c).

25       **SECTION 24.** 702.03 (1) of the statutes is amended to read:



1           702.03 (1) Unless the person who executed it had a contrary intention is found,  
2   if a governing instrument, as defined in s. 854.01 (2), or an inter vivos governing  
3   instrument, as defined in s. 700.27 (1) (c), creating a power of appointment expressly  
4   requires that the power be exercised by any type of reference to the power or its  
5   source, ~~it is presumed that~~ the donor's intention in requiring the reference was is  
6   presumed to be to prevent an inadvertent exercise of the power. Extrinsic evidence  
7   may be used to show contrary intent.

8           **SECTION 25.** 702.08 of the statutes is amended to read:

9           **702.08 Disclaimer of powers.** The donee of any power may disclaim all or  
10   part of the power as provided under s. 700.27 or 854.13.

11          **SECTION 26.** 705.04 (2) of the statutes is renumbered 705.04 (2) (intro.) and  
12   amended to read:

13          705.04 (2) (intro.) If the account is a P.O.D. account, on the death of the original  
14   payee or the survivor of 2 or more original payees, ~~any sums remaining on deposit~~  
15   belong to the P.O.D. beneficiaries if surviving, ~~or to the survivor of them if one or more~~  
16   die before the original payee. Payment may be made to a minor P.O.D. beneficiary,  
17   ~~however, only in accordance with a procedure approved in ch. 880.~~ all of the following  
18   apply:

19          (b) If there are 2 or more P.O.D. beneficiaries and they all survive, they shall  
20   be are entitled to payment of the sums on deposit in accordance with such any written  
21   instructions ~~as may have been~~ that the owner filed with the financial institution, ~~and~~  
22   or, if none the owner left no written instructions, to payment in equal shares. There

23          (c) If 2 or more persons succeed to ownership of the account, there is no further  
24   right of survivorship ~~in the event of the death of one of 2 or more P.O.D. beneficiaries~~

1 ~~after their entitlement to payment has matured~~ unless the terms of the account  
2 expressly provide for survivorship or for the account's continuance as a joint account.

3 **SECTION 27.** 705.04 (2) (a) of the statutes is created to read:

4 705.04 (2) (a) If there is one P.O.D. beneficiary and he or she survives, he or she  
5 is entitled to payment of all sums remaining on deposit.

6 **SECTION 28.** 705.04 (2) (d) of the statutes is created to read:

7 705.04 (2) (d) Subject to the rights of financial institutions under s. 705.06 (1)  
8 (c), if any P.O.D. beneficiary predeceases the original payee or the survivor of 2 or  
9 more original payees, the amount to which the predeceased P.O.D. beneficiary would  
10 have been entitled passes to any of his or her issue who would take under s. 854.06  
11 (3).

12 **SECTION 29.** 705.04 (2) (e) of the statutes is created to read:

13 705.04 (2) (e) If no P.O.D. beneficiary or predeceased P.O.D. beneficiary's issue  
14 who would take under s. 854.06 (3) survives the death of all owners, the account  
15 belongs to the estate of the deceased sole owner or the estate of the last to die of  
16 multiple owners.

17 **SECTION 30.** 705.04 (2) (f) of the statutes is created to read:

18 705.04 (2) (f) Payment may be made to a minor P.O.D. beneficiary only in  
19 accordance with a procedure approved under ch. 880.

20 **SECTION 31.** 705.06 (1) (c) of the statutes is amended to read:

21 705.06 (1) (c) Any sums in a P.O.D. account may be paid, on request, to the  
22 P.O.D. beneficiary upon presentation to the financial institution of proof of death  
23 showing that the P.O.D. beneficiary survived all persons named as original payees  
24 of the account. If more than one P.O.D. beneficiary is named and at least one of them  
25 is predeceased, sums in the account may be paid to the surviving P.O.D. beneficiary

1 or beneficiaries upon presentation of proof of death of the other beneficiary, without  
2 regard to claims by the issue of a predeceased beneficiary under s. 705.04 (2) (d). If  
3 none of the named beneficiaries survive, the sums in the account may be paid to the  
4 estate of the deceased sole owner or the estate of the owner who was the last to die  
5 of multiple owners, without regard to claims by the issue of a predeceased beneficiary  
6 under s. 705.04 (2) (d).

7 **SECTION 32.** 705.06 (2) of the statutes is amended to read:

8 705.06 (2) Payment made under this subchapter discharges the financial  
9 institution from all claims for amounts so withdrawn. If the institution has reason  
10 to believe that a dispute exists as to the rights of the parties to an account or their  
11 successors it may, but shall not be required to, refuse to pay funds in the account to  
12 any persons pending instructions from a court, or it may pay the proceeds to a court.  
13 An institution may but need not recognize the authority of an agent, other than one  
14 with continuing authority under s. 705.05 (3), until it knows of the fact of death or  
15 adjudication of incompetence of all parties appointing such agent and has reasonable  
16 opportunity to act.

17 (3) The protection provided by this section shall have no bearing on the rights  
18 of parties or their successors in disputes concerning the beneficial ownership of funds  
19 in or withdrawn from an account.

20 **SECTION 33.** 705.21 (12) (a) of the statutes is amended to read:

21 705.21 (12) (a) A reinvestment account associated with a security, a securities  
22 account with a broker, a cash balance in a brokerage account, cash, cash equivalents,  
23 interest, earnings, or dividends earned or declared on a security in an account, a  
24 reinvestment account, or a brokerage account, whether or not credited to the account  
25 before the owner's death.

1       **SECTION 34.** 705.21 (12) (am) of the statutes is created to read:

2       705.21 **(12)** (am) An investment agency, investment management, or custody  
3       account with a trust company or a trust division of a bank with trust powers,  
4       including the securities in the account, a cash balance in the account, and cash, cash  
5       equivalents, interest, earnings, or dividends earned or declared on a security in the  
6       account, whether or not credited to the account before the owner's death.

7       **SECTION 35.** 705.27 of the statutes is amended to read:

8       **705.27 Ownership on death of owner.** On death of a sole owner or the last  
9       to die of multiple owners, ownership of securities registered in beneficiary form  
10      passes to the beneficiary or beneficiaries who survive all owners and to any  
11      predeceased beneficiary's issue who would take under s. 854.06 (3). On proof of death  
12      of all owners and compliance with any applicable requirements of the registering  
13      entity, a security registered in beneficiary form may be reregistered in the name of  
14      the ~~beneficiary or beneficiaries who survive the death of all owners~~ successors to the  
15      ownership interest. Until division of the security after the death of all owners,  
16      multiple beneficiaries ~~surviving the death of all owners~~ successors to the ownership  
17      interest hold their interests as tenants in common. If no beneficiary or predeceased  
18      beneficiary's issue who would take under s. 854.06 (3) survives the death of all  
19      owners, the security belongs to the estate of the deceased sole owner or the estate of  
20      the last to die of multiple owners.

21      **SECTION 36.** 766.31 (1) (title) of the statutes is created to read:

22      766.31 **(1)** (title) GENERAL.

23      **SECTION 37.** 766.31 (2) (title) of the statutes is created to read:

24      766.31 **(2)** (title) PRESUMPTION.

1           **SECTION 38.** 766.31 (3) of the statutes is renumbered 766.31 (3) (intro.) and  
2 amended to read:

3           766.31 (3) ~~SPOUSES~~ <sup>need an apostrophe.</sup> INTEREST <sup>Interest</sup> IN MARITAL PROPERTY. (intro.) Each spouse has a  
4 present undivided one-half interest in each item of marital property, but the subject  
5 to all of the following:

6           (a) Terminable interest in deferred employment benefit plan. As provided in s.  
7 766.62 (5), the marital property interest of the nonemployee spouse in a deferred  
8 employment benefit plan or in assets in an individual retirement account that are  
9 traceable to the rollover of a deferred employment benefit plan terminates at the  
10 death of the nonemployee spouse if he or she predeceases the employee spouse.

\*\*\*\*NOTE: Maybe a cross-reference could eliminate the redundant language. For instance, couldn't we eliminate par. (a) and begin sub. (3) with "Except as provided in s. 766.62 (5)"? Or maybe you have a better way of eliminating the redundancy.

\* see  
separate sheet

11           **SECTION 39.** 766.31 (3) (b) of the statutes is created to read:

12           766.31 (3) (b) *Nonproportional division of marital property at death.* 1.  
13 Spouses may provide in a marital property agreement that at the death of a spouse  
14 some or all of their marital property will be divided based on aggregate value rather  
15 than divided item by item. However, at the death of a spouse, a marital property  
16 agreement is not necessary for a division of marital property that is not item by item.

17           2. The surviving spouse and the successor in interest to the decedent's share  
18 of marital property may enter into an agreement providing that some or all of the  
19 marital property in which each has an interest will be divided based on aggregate  
20 value rather than divided item by item.

21           **SECTION 40.** 766.31 (4) (title) of the statutes is created to read:

22           766.31 (4) (title) CLASSIFICATION OF INCOME.

23           **SECTION 41.** 766.31 (5) (title) of the statutes is created to read:

Note for LRB-0135/PI

pg 19, line 10

I tried to shorten it but was unsuccessful. The problem is that the redundancy is already in the statute and to pull it may confuse people.

If we just say "except as provided in 766.62(5)" we will take away an important signal as to the content of 766.62(5).

1        766.31 (5) (title) TRANSFER TO A TRUST.

2        **SECTION 42.** 766.31 (6) (title) of the statutes is created to read:

3        766.31 (6) (title) PROPERTY OWNED AT DETERMINATION DATE.

4        **SECTION 43.** 766.31 (6) of the statutes is renumbered 766.31 (6) (a) and  
5 amended to read:

6        766.31 (6) (a) *Date of marriage same as determination date.* Property owned  
7 at ~~a~~ the determination date, if the date of marriage which occurs after 12:01 a.m.  
8 on January 1, 1986, is the same as the determination date, is individual property of  
9 the owning spouse if, at the marriage, both spouses are domiciled in this state.

10       **SECTION 44.** 766.31 (6) (b) of the statutes is created to read:

11       766.31 (6) (b) *Date of marriage prior to determination date.* If the date of  
12 marriage precedes the determination date, the property owned at the determination  
13 date is not classified by this chapter but is subject to all of the following:

- 14       1. Subsections (8) and (9) govern property owned at the time of marriage.
- 15       2. Subsections (8) and (9) govern property acquired while the spouses were  
16 married but before the determination date if the property would have been  
17 individual property had it been acquired after the determination date.
- 18       3. Subsections (8) and (9) and s. 861.02 govern property acquired while the  
19 spouses were married but before the determination date if the property would have  
20 been marital property had it been acquired after the determination date.

21       **SECTION 45.** 766.31 (7) (title) of the statutes is created to read:

22       766.31 (7) (title) INDIVIDUAL PROPERTY AFTER DETERMINATION DATE.

23       **SECTION 46.** 766.31 (7p) (title) of the statutes is created to read:

24       766.31 (7p) (title) UNILATERAL STATEMENT.

25       **SECTION 47.** 766.31 (8) (title) of the statutes is created to read:

Changed to be parallel to your helpful  
changes to sub (b).

1           766.31 **(8)** (title) RIGHTS IN PROPERTY ACQUIRED BEFORE DETERMINATION DATE.

2           **SECTION 48.** 766.31 (9) (title) of the statutes is created to read:

3           766.31 **(9)** (title) TREATMENT OF PROPERTY ACQUIRED BEFORE THE DETERMINATION  
4           DATE.

5           **SECTION 49.** 766.31 (10) (title) of the statutes is created to read:

6           766.31 **(10)** (title) RECLASSIFICATION.

7           **SECTION 50.** 766.61 (7) of the statutes is amended to read:

8           766.61 **(7)** If Except as provided in s. 854.14 (3m) (b) 2., if a noninsured spouse  
9           predeceases an insured spouse, the marital property interest of the decedent spouse  
10          in a policy which that designates the surviving spouse as the owner and insured is  
11          limited to a dollar amount equal to one-half of the marital property interest in the  
12          interpolated terminal reserve and in the unused portion of the term premium of the  
13          policy on the date of death of the deceased spouse. All other rights of the decedent  
14          spouse in the ownership interest or proceeds of the policy, other than the marital  
15          property interest described in this subsection, terminate at the decedent spouse's  
16          death.

17          **SECTION 51.** 766.62 (2) of the statutes is amended to read:

18          766.62 **(2)** A deferred employment benefit attributable to employment of a  
19          spouse occurring while the spouse is married and partly before and partly after the  
20          determination date is mixed property. The marital property component of that mixed  
21          property is the amount which results from multiplying the entire benefit by a  
22          fraction, the numerator of which is the period of employment giving rise to the benefit  
23          that occurred after the determination date and during marriage and the  
24          denominator of which is the total period of employment giving rise to the benefit.

25          **SECTION 52.** 766.62 (4) of the statutes is renumbered 766.62 (4) (a).



1       **SECTION 53.** 766.62 (4) (b) of the statutes is created to read:

2       766.62 **(4)** (b) If a deferred employment benefit plan administrator has reason  
3       to believe that a dispute exists as to the rights of parties, or their successors, to a  
4       deferred employment benefit, the deferred employment benefit plan administrator  
5       may do any of the following:

6       1. Deposit the payments with a court.

7       2. Refuse to make payments to any person pending instruction from a court.

8       *\* Please see separate sheet*  
9       **SECTION 54.** 766.62 (4) (c) of the statutes is created to read:

10       766.62 **(4)** (c) The protection afforded a deferred employment benefit plan  
11       administrator under this subsection does not affect the rights of parties or their  
12       successors in disputes concerning the beneficial ownership of deferred employment  
13       benefits.

14       **SECTION 55.** 766.62 (5) (intro.) of the statutes is amended to read:

15       766.62 **(5)** (intro.) If Except as provided in s. 854.14 (3m) (c), if the nonemployee  
16       spouse predeceases the employee spouse, the marital property interest of the  
17       nonemployee spouse in all of the following terminates at the death of the  
18       nonemployee spouse:

19       **SECTION 56.** 767.266 (1) (b) of the statutes is amended to read:

20       767.266 **(1)** (b) That one or both spouses will make a particular disposition in  
21       a will or other governing instrument, as defined in s. 854.01 (2).

22       **SECTION 57.** 851.055 (1m) of the statutes is created to read:

23       851.055 **(1m)** Is not classified as individual property or marital property under  
24       a valid marital property agreement, unless the marital property agreement provides  
25       otherwise.

26       **SECTION 58.** 851.21 (1) (b) of the statutes is amended to read:

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p22 l 7

Were you able to check for similar provisions about disputes in Chs 700, 701, 705, 766, ~ 857-880? We would like to use the language of 766.62(4)(b) and (c) for all.  
Thanks.

1           851.21 (1) (b) A- Except as provided in s. 853.32 (2) (e), a beneficiary named in  
2           any document offered for probate as the will of the decedent and includes a person  
3           named or acting as a trustee of any trust, inter vivos or testamentary, named as a  
4           beneficiary.

5           **SECTION 59.** 851.31 of the statutes is amended to read:

6           **851.31 Will.** “Will” Unless the context or subject matter indicates otherwise,  
7           “will” includes a codicil and any document incorporated by reference in a  
8           testamentary document under s. 853.32 (1) or (2). “Will” does not include a copy,  
9           unless the copy has been proven as a will under s. 856.17, but “will” does include a  
10          properly executed duplicate original.

11          **SECTION 60.** 851.50 of the statutes is amended to read:

12          **851.50 Status of adopted persons.** The status of adopted persons for  
13          purposes of inheritance and transfers under wills or other governing instruments,  
14          as defined in s. 854.01 (2), is governed by ss. 854.20 and 854.21.

15          **SECTION 61.** 852.01 (1) (a) 2. of the statutes is renumbered 852.01 (1) (a) 2.  
16          (intro.) and amended to read:

17          852.01 (1) (a) 2. (intro.) If there are surviving issue one or more of whom are  
18          not issue of the surviving spouse, one-half of decedent’s property other than the  
19          following property:

20          a. The decedent’s interest in marital property.

21          **SECTION 62.** 852.01 (1) (a) 2. b. of the statutes is created to read:

22          852.01 (1) (a) 2. b. The decedent’s interest in property held equally and  
23          exclusively with the surviving spouse as tenants in common.

24          **SECTION 63.** 852.01 (1) (b) of the statutes is amended to read:

1           852.01 (1) (b) To the issue, per stirpes, the share of the estate not passing to the  
2 spouse under par. (a), or the entire estate if there is no surviving spouse. ~~If there are~~  
3 ~~issue other than children, those of more remote degrees take per stirpes.~~

4           **SECTION 64.** 852.12 of the statutes is amended to read:

5           **852.12 Debts to decedent.** If an heir owes a debt to the decedent, s. 854.12  
6 governs the treatment of that debt shall be charged against the intestate share of the  
7 debtor, ~~regardless of whether the debt has been discharged in bankruptcy.~~ If the  
8 debtor fails to survive the decedent, ~~the debt shall not be taken into account in~~  
9 ~~computing the intestate shares of the debtor's issue.~~

10          **SECTION 65.** 853.03 (2) of the statutes is renumbered 853.03 (2) (am) and  
11 amended to read:

12          853.03 (2) (am) It must be signed by ~~2 or more witnesses, each of whom at least~~  
13 2 witnesses who signed within a reasonable time after ~~witnessing~~ any of the  
14 following:

15           1. The signing of the will as provided under sub. (1), in the conscious presence  
16 of the witness.

17           2. The testator's implicit or explicit acknowledgement of the testator's  
18 signature on the will, ~~within~~ in the conscious presence of each of the witnesses  
19 witness.

20           3. The testator's implicit or explicit acknowledgement of the will, ~~within~~ in the  
21 conscious presence of each of the witnesses witness.

22          **SECTION 66.** 853.03 (2) (bm) of the statutes is created to read:

23          853.03 (2) (bm) The 2 witnesses required under par. (am) may observe the  
24 signing or acknowledgement under par. (am) 1. to 3. at different times.

25          **SECTION 67.** 853.04 (3) of the statutes is repealed and recreated to read:

1           853.04 (3) EFFECT OF AFFIDAVIT. The effect of an affidavit in substantially the  
2 form under sub. (1) or (2) is as provided in s. 856.16.

3           **SECTION 68.** 853.11 (2) of the statutes is renumbered 853.12, and 853.12 (1),  
4 (2) (intro.), (b) and (c), (3) (intro.) and (4) (intro.) and (b), as renumbered, are amended  
5 to read:

6           853.12 (1) ENTITLEMENT OF SURVIVING SPOUSE. Subject to ~~par. (c)~~ sub. (3), if the  
7 testator married the surviving spouse after the testator executed his or her will, the  
8 surviving spouse is entitled to a share of the probate estate.

9           (2) VALUE OF SHARE. (intro.) The value of the share under ~~par. (a)~~ sub. (1) is the  
10 value of the share that the surviving spouse would have received had the testator  
11 died with an intestate estate equal to the value of the net estate of the ~~decedent~~  
12 testator less the value of all of the following:

13           (b) All devises to or for the benefit of the issue of a child described in ~~subd. 1.~~  
14 par. (a).

15           (c) All devises that pass under s. 854.06, 854.07, 854.21, or 854.22 to or for the  
16 benefit of children described in ~~subd. 1.~~ par. (a) or issue of those children.

17           (3) EXCEPTIONS. (intro.) ~~Paragraph (a)~~ Subsection (1) does not apply if any of  
18 the following applies:

19           (4) PRIORITY AND ABATEMENT. (intro.) In satisfying the share provided by this  
20 ~~subsection~~ section:

21           (b) Devises other than those described in ~~par. (b) 1. to 3.~~ sub. (2) (a) to (c) abate  
22 as provided under s. 854.18.

\*\*\*\*NOTE: To answer your question, the title to s. 853.12 exists but does not appear  
here because only provisions being amended appear. *Thanks.*

23           **SECTION 69.** 853.11 (2m) of the statutes is created to read:

1           853.11 (2m) PREMARITAL WILL. Entitlements of a surviving spouse under a  
2           decedent's will that was executed before marriage to the surviving spouse are  
3           governed by s. 853.12.

4           **SECTION 70.** 853.11 (3) of the statutes is amended to read:

5           853.11 (3) ~~FORMER-SPOUSE~~ REVOCATION BY DIVORCE. ~~The effect of a~~ A transfer  
6           under a will to a former spouse is governed by s. 854.15.

7           **SECTION 71.** 853.11 (6) (c) of the statutes is amended to read:

8           853.11 (6) (c) If a subsequent will that wholly or partly revoked a previous will  
9           is itself revoked by another, later will, the previous will or its revoked part remains  
10          revoked, unless it or its revoked part is revived. The previous will or its revoked part  
11          is revived to the extent that it appears from the terms of the later will, or from the  
12          testator's contemporary or subsequent declarations, that the testator intended the  
13          previous will or its revoked part to take effect.

14          **SECTION 72.** 853.11 (6) (d) of the statutes is amended to read:

15          853.11 (6) (d) In the absence of an original valid will, establishment of the  
16          execution and validity of the revived will or part is governed by may be established  
17          as provided in s. 856.17.

18          **SECTION 73.** 853.18 (1) of the statutes is amended to read:

19          853.18 (1) Except as otherwise provided in s. 853.15 or 853.17 (1) or ch. 766,  
20          no written designation in accordance with the terms of any insurance, annuity or  
21          endowment contract, or in any agreement issued or entered into by an insurance  
22          company in connection therewith, supplemental thereto or in settlement thereof,  
23          and no written designation made under a contract, plan, system or trust providing  
24          for pension, retirement, deferred compensation, stock bonus, profit-sharing or death  
25          benefits, or an employment or commission contract, of any person to be a beneficiary,

1 payee or owner of any right, title or interest thereunder upon the death of another,  
2 or any assignment of rights under any of the foregoing, is subject to or defeated or  
3 impaired by any statute or rule of law governing the transfer of property by will, gift  
4 or intestacy, even though that designation or assignment is revocable or the rights  
5 of that beneficiary, payee, owner or assignee are otherwise subject to defeasance.

6 **SECTION 74.** 853.32 (1) of the statutes is renumbered 853.32 (1) (am).

7 **SECTION 75.** 853.32 (1) (bm) of the statutes is created to read:

8 853.32 (1) (bm) A writing or document is incorporated into a will under par.  
9 (am) even if the writing or document is not executed in compliance with s. 853.03 or  
10 853.05.

11 **SECTION 76.** 853.32 (2) (a) of the statutes is amended to read:

12 853.32 (2) (a) A reference in a will ~~executed on or after May 3, 1996~~, to another  
13 document that lists tangible personal property not otherwise specifically disposed of  
14 in the will disposes of that property if the other document describes the property and  
15 the distributees with reasonable certainty and is signed and dated by the decedent.  
16 The court may enforce a document that is not dated but that fulfills all of the other  
17 requirements under this paragraph.

18 **SECTION 77.** 853.32 (2) (am) of the statutes is created to read:

19 853.32 (2) (am) The document was signed in compliance with s. 853.03 (1) or  
20 with the law of the place where the document was signed, or where the testator  
21 resided, was domiciled, or was a national at the time the document was signed or at  
22 the time of death, but was not otherwise executed in compliance with s. 853.03 (2)  
23 or 853.05.

24 **SECTION 78.** 853.32 (2) (b) of the statutes is renumbered 853.32 (2) (b) (intro.)  
25 and amended to read:

1           853.32 (2) (b) (intro.) Another document under par. (a) is valid even if it any of  
2           the following applies:

- 3           1. The document does not exist when the will is executed, ~~even if it,~~  
4           2. The document is changed after the will is executed ~~and even if it,~~  
5           3. The document has no significance except for its effect on the disposition of  
6           property by the will.

7           **SECTION 79.** 854.01 of the statutes is renumbered 854.01 (intro.) and amended  
8           to read:

9           **854.01 Definition Definitions.** (intro.) In this chapter, “governing:

10          (2) “Governing instrument” means a will; a deed; a trust instrument; an  
11          insurance or annuity policy; a contract; a pension, profit-sharing, retirement, or  
12          similar benefit plan; a marital property agreement under s. 766.58 (3) (f); a  
13          beneficiary designation under s. 40.02 (8) (a); an instrument under ch. 705; an  
14          instrument that creates or exercises a power of appointment; or any other  
15          dispositive, appointive, or nominative instrument that transfers property at death.

16          **SECTION 80.** 854.01 (1) of the statutes is created to read:

17          854.01 (1) “Extrinsic evidence” means evidence that would be inadmissible  
18          under the common law parole evidence rule or a similar doctrine because the  
19          evidence is not contained in the governing instrument to which it relates.

20          **SECTION 81.** 854.03 (2) (b) of the statutes is amended to read:

21          854.03 (2) (b) Except as provided in sub. (5), if property is transferred under  
22          a governing instrument that establishes 2 or more co-owners with right of  
23          survivorship, and if it is not established that at least one of the co-owners survived  
24          did not survive the others by at least 120 hours, the property is transferred to the  
25          co-owners in proportion to their ownership interests.



1           **SECTION 82.** 854.03 (3) of the statutes is repealed.

2           **SECTION 83.** 854.03 (4) of the statutes is repealed.

3           **SECTION 84.** 854.03 (5) (d) of the statutes is amended to read:

4           854.03 (5) (d) The imposition of a 120-hour survival requirement would cause  
5           a nonvested property interest or a power of appointment to fail to be valid, or to be  
6           invalidated, under s. 700.16 or under the rule against perpetuities of the applicable  
7           jurisdiction.

8           **SECTION 85.** 854.03 (5) (g) of the statutes is created to read:

9           854.03 (5) (g) The statute or governing instrument specifies that this statute,  
10          or one similar to it, does not apply.

11          **SECTION 86.** 854.03 (5) (h) of the statutes is created to read:

12          854.03 (5) (h) The transfer is under a governing instrument and the transfer  
13          is controlled by a provision regarding survivorship that is included in a will, trust,  
14          or marital property agreement executed by the transferor and that is intended to  
15          apply to transfers under other governing instruments.

16          **SECTION 87.** 854.03 (5) (i) of the statutes is created to read:

17          854.03 (5) (i) The transfer is under a governing instrument and the person who  
18          executed the governing instrument had a contrary intent. Extrinsic evidence may  
19          be used to construe that intent.

20          **SECTION 88.** 854.03 (5) (j) of the statutes is created to read:

21          854.03 (5) (j) The imposition of a 120-hour survival requirement would be  
22          administratively cumbersome and would not change the identity of the ultimate  
23          beneficiaries of the property or the property that each beneficiary would receive.

24          **SECTION 89.** 854.03 (6) of the statutes is amended to read:

1           854.03 **(6)** EVIDENTIARY STANDARD. Unless the statute or governing instrument  
2 provides otherwise, proof that an individual survived the period required under  
3 subs. ~~(1) to (4)~~ this section must be by clear and convincing evidence.

4           **SECTION 90.** 854.03 (7) of the statutes is repealed.

5           **SECTION 91.** 854.035 of the statutes is created to read:

6           **854.035 Provision regarding survivorship.** If a will, trust, or marital  
7 property agreement contains a provision regarding survivorship that is intended to  
8 apply to transfers under other governing instruments, that provision shall control.  
9 Extrinsic evidence may be used to construe the intent of the person who executed the  
10 will, trust, or marital property agreement.

11          **SECTION 92.** 854.04 (1) (a) of the statutes is amended to read:

12          854.04 **(1)** (a) Except as provided in subs. (5) and (6), if a statute or a governing  
13 instrument calls for property to be distributed to the issue or descendants of a  
14 designated person “by representation”, “by right of representation,” or “per  
15 stirpes”, the property is divided into equal shares for the designated person’s  
16 surviving children of the designated person and for the designated person’s deceased  
17 children who left surviving issue. Each surviving child and each deceased child who  
18 left surviving issue are allocated one share.

19          **SECTION 93.** 854.04 (5) (intro.) of the statutes is amended to read:

20          854.04 **(5)** CERTAIN INDIVIDUALS DISREGARDED. (intro.) For the purposes of ~~this~~  
21 ~~section~~ subs. (1) to (3), all of the following apply:

22          **SECTION 94.** 854.05 (5) of the statutes is renumbered 854.05 (5) (a) and  
23 amended to read:

24          854.05 **(5)** (a) This section does not apply ~~to the extent that a governing~~  
25 ~~instrument, either expressly or as construed from extrinsic evidence, provides~~

1 otherwise if the person who executed the governing instrument had a contrary  
2 intent. Extrinsic evidence may be used to construe that intent.

3 (b) A general directive to pay debts does not give rise to a presumption of  
4 exoneration.

5 SECTION 95. 854.06 (1) (b) of the statutes is repealed.

6 SECTION 96. 854.06 (4) (a) of the statutes is renumbered 854.06 (4) (intro.) and  
7 amended to read:

8 854.06 (4) CONTRARY INTENT. (intro.) This section Subsection (3) does not apply  
9 if there is a finding of any of the following applies:

10 (c) The person who executed the governing instrument had a contrary intent  
11 of the decedent. Extrinsic evidence may be used to construe that intent.

12 SECTION 97. 854.06 (4) (am) of the statutes is created to read:

13 854.06 (4) (am) The governing instrument provides that a transfer to a  
14 predeceased beneficiary lapses.

15 SECTION 98. 854.06 (4) (b) of the statutes is amended to read:

16 854.06 (4) (b) If the The governing instrument designates one or more persons,  
17 classes, or groups of people as contingent transferees, in which case those transferees  
18 take in preference to those under sub. (3). But Unless par. (c) applies, if none of the  
19 contingent transferees survives, sub. (3) applies to the first group in the sequence of  
20 contingent transferees that has one or more transferees specified in sub. (2) who left  
21 surviving issue.

22 SECTION 99. 854.07 (3) of the statutes is amended to read:

23 854.07 (3) If a governing instrument other than a will does not effectively  
24 dispose of an asset that is governed by the instrument, that asset shall be paid or  
25 distributed to the decedent's transferor's probate estate.